IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 247 OF 2005

IN

SUIT NO. 187 OF 2005

Mahendra Bhatia .. Plaintiffs

versus

Sonam Builders & ors. .. Defendants

...

Mr.K.R. Dhanuka with Mr.M.B. Jadhav for the plaintiff.

Mr.S.G. Deshmukh with Mr.M.S. Kumthekar for the defendant no.4.

Mr.R.D. Suryavanshi for the defendant nos.1 and 2.

CORAM : D.G. KARNIK,J.

DATED : 4th March 2005.

P.C.:

1. Heard the learned counsel for the appearing parties.

2. The plaintiff seeks ad-interim relief for appointment of the Court Receiver as the receiver in respect of the suit flat and also for possession.

3. According to the plaintiff, the defendant nos.1 and 2 agreed to sell the suit flat to the plaintiff and also handed over the possession thereof. As the defendant nos.1 and 2 tried to dispossess the plaintiff, the plaintiff filed a suit bearing Suit no.838 of 2004 against defendant nos.1 to 3 and took out a motion No. 856 of 2004 for the relief of injunction and appointment of receiver. By an order dated 19th march 2004, this Court (Coram: S.C. Dharmadhikari, J) granted ad-interim relief of an injunction and by an order dated 14th May 2004, a receiver was also appointed by way of an ad-interim relief. The receiver however could not take possession of the suit flat as the receiver noticed that the defendant no.4 was in possession. Thereafter, the plaintiff has filed the present suit for possession u/s.6 of the Specific Relief Act alleging that the plaintiff was forcibly dispossessed by the defendant no.2 in collusion with defendant no.4 on 29th may 2004. In view of this, plaintiff has prayed for restoring the possession to him by way of an ad-interim relief and also appointment of a receiver and appointing him as an agent of the receiver.

4. By filing separate two affidavits, the defendant nos.1 & 2 and defendant no.4 have contested the motion. The defendants contend that the defendant nos.1 and 2 have entered into a registered agreement of sale on 27th February 2004 agreeing to sell the suit flat to the defendant no.4. They further contend that possession of the suit flat was never with the plaintiff but the defendant no.4 is put in possession of the suit flat on 20th March 2004 in part performance of the registered agreement of sale dated 27th February 2004. According to them, the defendant nos.1 and 2 were not aware of the order dated 19th march 2004 passed by this Court when they handed over the possession to the defendant no.4 on 20th March 2004. They further submit that the order dated 19th March 2004 was communicated to them only on 20th March 2004 after the possession was handed over to the defendant no.4.

5. I have perused the copy of the agreement for sale dated 27th February 2004 which is annexed as Annexure "A" to the affidavit in reply. The document is also registered. The agreement in favour of defendant no.4 was executed much prior to the order passed by this Court on 19th March 2004. The

defendant no.4 was put in possession of the suit flat on 20th March 2004 prior to the knowledge of the order of injunction dated 19th March 2004. The defendants deny that the plaintiff was forcibly dispossessed on 29th May 2004.

6. At this stage, on the basis of the materials presently on record, it is not possible to conclude that the defendant nos.1 and 2 have forcibly dispossessed the plaintiff on 29th May 2004 as alleged. Such a finding can be reached only at the time of the hearing of the suit or atleast at the time of the final hearing of the motion. In such circumstances, no ad-interim relief of possession or receiver can be granted in favour of the plaintiff. However in order to protect the property till the hearing of the motion, it would be appropriate to grant ad-interim relief in terms of prayer clause (b) restraining the parties from creating any third party interest during the pending of the motion. Hence, I pass the following order :-

7. There shall be ad-interim relief in terms of prayer clause (b). Ad-interim relief in terms of prayer clause (a) is declined.

8. Motion is made returnable in due course.

D.G. KARNIK,J